IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23-01-2007

THE HON'BLE MR. JUSTICE R.REGUPATHI

Crl.A.No.1157 of 2000

State by:
Inspector,
Southern Railway Protection Force,
Villupuram.
Rep.by Public Prosecutor,
High Court, Madras. . . Appellant/Petitioner

Versus

Ramanathan . . Respondent/Accussed 1

This Criminal Appeal is filed to set aside the order of acquittal passed in C.A.No.87/95 dated 19.1.99 on the file of the principal Sessions Judge, Villupuram against the respondent.

For Appellant : Mr.N.Kumanan
Government Advocate (Crl. Side)

For Respondent : Mr.A.Rajendran

JUDGMENT

The respondent/A1 in this case along with 13 persons have been listed as accused for an offence punishable under Section 3(a) Railway Property (Unlawful Possession Act, 1966), r/w 109 IPC. Except four accused, namely A1 to A4, other accused pleaded guilty and they have been convicted and paid Rs.500/- as fine. The leftover 4 accused taken up the trial and on the conclusion of the trial the respondent/A1 alone was convicted for the offence punishable under Section 3(a) Railway Property (Unlawful Possession Act, 1966) and sentenced to undergo 2 years rigorous imprisonment and fine of Rs.2,000/- in default 4 months simple imprisonment by the Chief Judicial Magistrate, Villupuram.

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2.The respondent preferred an appeal before the Principal Sessions Judge, Villupuram. The Principal Sessions Judge set aside the conviction and the respondent was acquitted. The State preferred the present appeal aggrieved against the acquittal passed by the learned Principal Sessions Judge, Villupuram.

3.As per the case of the prosecution, PW1 who is the investigating officer raided the premises of the respondent accompanied by PW2 on 16.09.92 and recovered 440 sleeper pots of total value of Rs.52,800/-(MO1) under ExP3 mahazar in the presence of mahazar witnesses. The respondent was arrested on 18.09.92 and on his confession, A2 to A6 have been arrested and subsequently on receipt of information from A2 to A6 other accused have been arrested.

4.Further as per the case of the prosecution, A1 stolen the said sleeper pots. A2 & A3 are the persons who have transported the stolen railway property by lorry to the shop of A1. A4 and A5 have arranged the lorry. A6 committed the theft along with A1. A7 and A8 accompanied to load and unload the stolen sleeper pots. A9 arranged the lorry through broker. A10 committed the act of theft along with A1. A11 and A12 are the drivers of the lorry. A13 gave idea and direction for committing theft. A14 accompanied A4 and other accused and assisted in committing the theft. To substantiate the offence 19 witnesses have been examined and 59 exhibits have been marked by the prosecution. PW1 is the Inspector of Police, Railways Protection Force. PW2 is the Assistant Sub Inspector who accompanied PW1. PW3 is the Permanent Way Inspector who has given the complaint. PW4 to PW11 are the witnesses who have attested the statements of the accused as well as the identification of the accused. PW12 is a Clerk in the lorry broker's office. PW13 and PW14 are the witnesses to the occurrence. PW15 and PW16 are the owners of the lorry. PW17 is the Revenue Divisional Officer. PW18 is the wife of A1 and PW19 is the Assistant Sub Inspector who accompanied PW1 and PW2.

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5.The learned counsel for the respondent/accused No.1 submits that the order impugned passed by the appellate Court is well founded and there is no reason to interfere with the same. In a case like this, the prosecution must establish

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a) that the accused is in possession of the Railway property;

b)that the property seized from the accused is the railway property and

c)the said Railway property is reasonably susceptible for being stolen.

6.In the case on hand, the English word SVS has been printed on the said property and this has been manufactured by a private agency. To substantiate the purchase of these sleeper pots from the private agency an officer of railway has deposed as DW1. DW2 is the person who received the property by Court auction. Both the witnesses identified the property and substantiated that the property in question is the property which has been sold in auction and purchased by DW2. Subsequently the accused has purchased it from DW2. There are no materials to show that the property belongs to railways. To substantiate that the property belongs to railways documentary materials could have been furnished, including the stock register and the same has not been filed by the railways. Trip sheet of the lorry for the transport of the property has not been produced by the witnesses PW16 and PW17. All the independent witnesses namely PW4 to PW11, PW13, PW14 and PW18 have turned hostile. Even by accepting the evidence of PW1 PW2 and PW19, the offence alleged is not made out.

7.The learned Government Advocate (Criminal side) submits that the Railways authorities purchased such type of property from the private manufacturer's namely SVS. The co-accused had admitted their guilt and fine has been imposed. The roles played by A2 and A3 are that they transported the said property of the railway in the lorry and A4 arranged the lorry and there is no direct involvement of these co-accused for the offence, therefore they have been acquitted. Hence, the acquittal of the co-accused cannot be taken advantage of. Seizure of the stolen goods was only from the place of the respondent. Relying on the evidence of PW1 and others, the respondent was convicted by the trial Court and the conviction granted by the trial Court is well founded.

8.I have perused the materials available on record. The property namely MO1 has been manufactured by private agency under the caption SVS, for the Indian Railways. Ledger and other documentary materials have not been produced to substantiate that the property belongs to Railways on the date of seizure. Moreover DW1 being the railway employee through his evidence substantiate that the property in question has been auctioned by the Railways and purchased by DW2. DW2 also in his evidence has stated that those property has been sold to the respondent. In the absence of materials to connect the respondent with the crime, the respondent cannot be convicted for the offence alleged. It has not been established

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that the respondent was in possession of railway property which has been stolen from the railways. I find that the reasons assigned to acquit the accused by the Appellate Court are unassailable. I do not find any merit in this appeal and therefore the same is dismissed. The judgment of the Principal Sessions Judge, Villupuram is confirmed. Accordingly ordered.

jikr

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

1. The Principal Sessions Judge, Villupuram (with records)

2. The Chief Judicial Magistrate, villupuram.

3. Inspector, Southern Railway Protection Force,
   Villupuram.

4. The Public Prosecutor, High Court, Madras.

+1 cc to Mr.J.L.C.Pandiaraj, Advocate Sr.No.4399.

AVA (CO)
dcp/12.2.07

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